

## **REMARKS**

Claims 1-20 are pending in the application.

Claims 1-20 have been rejected.

Claim 6 has been cancelled without prejudice.

Claims 1, 2, 4, 5, 8, 10-15, 17, 19, 20 have been amended, as indicated above, to overcome the Section 112 rejections.

The specification has been amended, as indicated above, to correct minor informalities.

No new matter has been added.

Reconsideration of the Claims is respectfully requested.

### **1. Objection to the Drawings**

*Claim 2 was objected to as not the following reference character(s) were not mentioned in the description: Reference number 94 in Figure 2.*

The Specification has been amended as indicated above to address the objection.

### **2. Objection to the Claims**

*Claims 1-20 were objected to because of informalities.*

Appropriate correction has been made.

### **3. Rejection under Section 112**

*Claims 10, 11, 14, and 20 were rejected under 35 USC § 112, ¶ 1, as failing to comply with the enablement requirement.*

Appropriate correction has been made.

*Claims 1-12 and 14-20 were rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention..*

Appropriate correction has been made.

### **4. Rejection under 35 U.S.C. Section 102**

*Claims 1, 3, 4, 9 and 19 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent No. 7,286,545, to Tester et al. ("Tester").*

For establishing anticipation, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

. . . The identical invention must be shown in as complete detail as is contained in the . . . claim.” MPEP 2131 at p. 2100-67 (Rev. 6, Sept. 2007) (citations omitted).

Tester relates to a “a service broker capable of dynamically provisioning media gateways, gateway controllers, and call servers when adding one or more of these elements to the network, or reconfiguring the network when an element fails or to balance loads.” (Tester 2:22-26). Tester does not recite upon

Applicant’s Independent Claim 1 recites, *inter alia*, a “method for transferring call control to a backup call server, comprising: monitoring a primary call server to determine an active or inactive state of said primary call server; and upon receipt of an inactive state for said primary call server, forwarding signaling messages from a signaling gateway of a plurality of signaling gateways to a backup call server wherein each of the signaling gateways may have a different backup call server.” (emphasis added).

Applicant’s Independent Claim 19 recites, *inter alia*, a “signaling gateway for a cellular network coupled to communicate with a destination switching element and to at least one Home Location Register (HLR), comprising: . . . a memory for storing computer instructions that define the operation logic of the signaling gateway, wherein the computer instructions include logic for: receiving call signaling messages from the at least one HLR or an initiating Mobile Switching Station (MSC); determining whether the destination switching element is in an inactive state; if the destination switching element is in an inactive state, determining a first backup switching element; and transparently forwarding the call signaling messages to the first backup switching element.” (emphasis added).

Applicant respectfully only if each and every element as set forth in its claims is not found, either expressly or inherently described, in the reference of Tester. For example, Tester does not recite the monitoring of a primary call server. Also, Tester does not recite operations of a signaling gateway for a cellular network such as the recited in Applicant’s Independent Claim 19.

## **5. Rejection under 35 U.S.C. Section 103**

In general, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally,

the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Although the Supreme Court, in re-confirming the *Graham* factors, had admonished the use of the teaching-suggestion-motivation (TSM) test as an end of the obviousness inquiry, “[the Court] also recognized that [the teaching-suggestion-motivation (TSM) rationale] was one of a number of valid rationales that could be used to determine obviousness.” MPEP § 2143 at 2100-118 (Rev. 6, Sept. 2007). Under this rationale, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Also, a finding is to be articulated that there was a reasonable expectation of success. MPEP § 2143 (G) at page 2100-138 (Rev. 6, Sept. 2007).

Further, all claim limitations must be considered. That is, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” MPEP § 2143.03 at page 2100-142 (Rev. 6, Sept. 2007) (citations omitted).

*Claim 5 was rejected under 35 USC 103(a) as being unpatentable over Tester.*

*Claim 8 was rejected under 35 USC 103(a) as being unpatentable over Tester in view of U.S. Published App. No. 2002/0024943, to Karaul et al. (“Karaul”).*

*Claim 13 was rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,947,747, to Stumpert (“Stumpert”) in view of U.S. Patent No. 6,408,182, to Davidson et al. (“Davidson”).*

Claims 5 and 8 depend from Independent claim 1. As submitted, Tester does not provide all of the elements recited of Applicant's Independent 1. Applicant respectfully submits that Tester or Tester in combination with Karaul does not provide a *prima facie* showing of obviousness because all the claim limitations are not taught or suggested by the proposed combinations.

Stumpert relates to “to separation of the call control and the bearer control.” (Stumpert 1:31-32). Stumpert does not recite a signaling gateway that redirects call signaling messages to a backup gateway MSC.

Davidson relates to a “telecommunications network architecture providing failover operations between mobile switching centers (MSCs). The network architecture includes a communications network such as an Internet Protocol (IP) network in which transmission paths and control paths are logically separated.” (Davidson 1:44-49).

Applicant respectfully submits that there has not been a *prima facie* showing that substantiates the rejection of Applicant’s claimed invention. There is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the call control and bearer control of Stumpert with the alternate MSC of Davidson to achieve Applicant’s claimed invention as set out in Independent Claim 13.

#### **6. Allowable Subject Matter**

*Claims 10 and 14 would be allowable if rewritten or amended to overcome the rejections under Section 112.*

*Claims 2, 6, 7, 11, 12, 15-18 and 20 would be allowable if rewritten to overcome the rejections under Section 112 and to include the limitations of the base claim and any intervening claims.*

Applicant notes with appreciation these indications of allowability.

#### **7. Conclusion**

As a result of the foregoing, the Applicant respectfully submits that Claims 1-5 and 7-20 in the Application are in condition for allowance, and respectfully requests allowance of such Claims.

If any issues arise, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at [ksmith@texaspatents.com](mailto:ksmith@texaspatents.com).

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Garlick Harrison & Markison Deposit Account No. 50-2126.

Respectfully submitted,

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